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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Libya – Human Trafficking and Slavery*

The United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad Al-Hussein, on the 14th of November 2017, expressed deep dismay regarding the appalling conditions of detention facilities in Libya. Additionally, he expressed concern over the plight of African migrants detained in these facilities further noting that the detention system in Libya is "broken beyond repair".

Furthermore, on 20 November 2017, United Nations Secretary General, António Guterres spoke to reporters expressing his horror regarding news reports that showed alleged human slavery at an auction in Libya. The victims are African migrants who were captured, trafficked, and/or tricked into slavery. Mr. Guterres also called on the international community to unite in order to eliminate these crimes against humanity as they have a due responsibility and commitment to take action.

In this statement we would like to emphasise that the root causes of the human slave auctions in Libya need a serious investigation by a specialized UN mission guided by the UN Human Rights Council. Respect, dignity, and security for the human rights of African migrants en route to and under captivity in Libya must be protected.

Alternatives to detention

In order to adequately address the situation of trafficking and appropriately show concern for migrants who make their way and attempt to cross Libya, a holistic approach needs to be seriously implemented. This entails adding more focus on the factors of forced migration, particularly in the West African region, where the majority of African migrants make the journey to and across Libya. According to witness testimony of thousands of returnees (mainly from Nigeria) there is very little concern for the African migrant life as they are starved, beaten, or killed by traffickers. The detention centres, which are sometimes dungeons or auction centres, and prisons such as Giyuan, serve as confinements where horrific abuses take place. The most common adjective by captured migrants to describe the conditions and experiences is "hell". Serious investigation needs to be carried out in order to identify the owners and profiteers of such centres, trafficking, and slavery. Towards this end mutual cooperation and dialogue needs to be carried out by host, transit, and destination countries with an independent mediator from the United Nations.

Since 2011 Libya has gone into deep peril and is facing many challenges. As previously mentioned, the detention system itself is non-functional for the security and well-being of migrants. It is in this instance that the Human Rights Council and the international community have a due responsibility to provide all necessary assistance in their capacity to ensure that the human rights of migrants and people on the move is promoted and protected.

International norms and customs on slavery

The 'Slavery Convention' signed in Geneva on the 25th of September 1926, defines slavery (despite having caused controversies) in its 1st Article as:

"*... the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*".1

It also states under Article 5 that states are, "*to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.*"

1 It further notes in Article 1 (2): "*The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.*"

Though approximately 300 international agreements between 1819 and 1957 to suppress slavery were implemented, none has been entirely successful nor effective. Since the General Act of Brussels of 1890, signatories ensured their desire to put an end to "slavery in all its forms". The League of Nations, additionally, put in major efforts to put an end to slavery and slavery-related practices. After the Second World War the struggle to end slavery continued and finally became recognised in international law to the point that the abolition of slavery and slavery-related practices have gained '*jus cogens*' status and the practice of slavery is universally recognised and accepted by the International Court of Justice as:

a) A "war-crime" when committed by a belligerent against the nationals of another belligerent;
b) A "crime against humanity" when committed by public officials against any person irrespective of circumstances and diversity of nationality;
c) A common international crime when committed by public officials or private persons against any person.

The International Court of Justice has identified the protection against slavery as an example of "obligations *erga omnes* arising out of human rights law" and that all nations have a standing to bring offending nations before the Court of Justice.2

There has been some disagreement regarding remedial measures and strategies to eradicate slavery despite universal condemnation of the practice. Moreover, other conventions such as the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights states in Article 4: "*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms*", explicitly prohibiting slavery and ensuring the security of persons regarding labour. Such conventions also call on States parties to ensure protection against slavery, as prohibited under a number of international instruments and norms that contain legal and moral obligations for states3.

Notable responses warrant tackling root causes

The Special Procedures of the Human Rights Council including the Special Rapporteur on contemporary forms of slavery, Urmila Bhoola, Special Rapporteur on the human rights of migrants, Felipe Gonzalez-Morales, and Special Rapporteur on trafficking of persons, Maria Grazia Giammarinaro, amongst other experts on human rights issues and minorities, have strongly condemned the auctioning of African migrants in Libya and called for the immediate release of those already in captivity via a joint statement. Their statement also noted that African migrants in Libya "*are at high risk of multiple grave violations of their human rights, such as slavery, forced labour, trafficking, arbitrary and indefinite detention, exploitation and extortion, rape, torture and even being killed*".

On 21st of November 2017, the Chairperson of the African Union Commission and the President of Guinea, Professor Alpha Conde, condemned the horrific acts, called for its immediate cessation, and requested that the situation be investigated and perpetrators identified and held to account. Libya apparently opened an investigation into the situation and pledged to return those who are in captivity.

Despite many strong condemnations by relevant actors, there is much concern that such responses may amount to little action particularly by those in positions to make impactful and necessary changes to protect the victims of slavery. Concrete propositions, such as during the Security Council meeting of 21st November 2017 on 'Trafficking of persons in conflict situations', or Angela Merkel's request for a legal route to ensure security from Africa to Europe, as well as, Guenter Nooke's (Merkel's Africa envoy) suggestion concerning creating more opportunities for young Africans in

2 "Abolishing Slavery and its Contemporary Forms". United Nations New York and Geneva. 2002.

3 The International Covenant on Economic, Social and Cultural Rights (Art. 6(1), 5, 7, and 8), The International Covenant on Civil and Political Rights (Art. 4(2), 8), the Rome Statute of the International Criminal Court (Art. 7(2)(c), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) that supplements the United Nations Convention against Transnational Organized Crime

their countries of origin, or ensuring that perpetrators in Libya and other countries of transit have more stable political environments and secure economies are warranted for serious and urgent discussion and implementation

The Fifth African Union (AU) – European Union (EU) Summit

While there has been widespread condemnation of the human trafficking in Libya there needs to be a stronger call to tackle the root problems and ensure that conditions are never allowed anywhere for such a crime against humanity to be repeated. Countries of origin of African migrants, especially, Guinea, Senegal, Mali, Niger, Nigeria, and Gambia (Republic of The) (from which the majority of African migrants originate), must urgently and seriously consider the root economic and social causes forcing many of their citizens to embark on such a dangerous and risky route to arrive to their desired destination. In collaboration with the African Union, these countries must imperatively create opportunities for regular migration. In addition, in close cooperation with North African countries, especially Libya, security measures to ensure the safety of all migrants must immediately be put in place.

Recommendations

The **UN Human Rights Council** should:

- *Provide* all necessary technical assistance and human rights training of security forces and border patrols along migration routes to Libya and at its borders.
- *Delegate* appropriate UN mechanisms to *investigate and hold to account* the perpetrators and profiteers of the auction of African migrants as slaves in Libya.

The **African Union** and **European Union** should:

- *Organize and hold* a special session for the EU-AU-UN Task Force (established in November 2017) and all other relevant parties to address, discuss, and find solutions to the root causes of forced migration in Western and Northern Africa and to further build on creating development and stability opportunities in countries of origin and countries of transit.
- *Urgently address* the social, economic, and political situation in Libya and *assist* and *urge* the Libyan government and authorities in providing better opportunities for its citizens to secure their well-being and that of others.
- *Provide and enhance* legal, secure, and affordable documentation and transport within the continent of Africa and beyond.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGO(s) without consultative status, also share the views expressed in this statement.